CHI CHAO-TON TONY & ORS v. REPUTE VENTURES SDN BHD

COURT OF APPEAL, PUTRAJAYA
TENGKU MAIMUN TUAN MAT JCA
YEOH WEE SIAM JCA
HANIPAH FARIKULLAH JCA
[CIVIL APPEAL NO: J-02(IM)-453-03-2018]
21 DECEMBER 2018

CIVIL PROCEDURE: *Damages – Assessment – Appeal – Claim for compensation of purchase price of machineries – Whether High Court took into account depreciation of machineries based on 'accepted accounting principles' in assessing damages – Whether High Court correct in relying wholly on auditor's report adduced by only one party – Whether auditor's report took into account brand, model and life span of machineries – Whether no depreciation as machineries were never utilised – Whether value of machineries same as original purchase price – Percentage of fair value of depreciation of machineries – Whether damages assessed fair – Companies Act 1965, s. 305(1)*

COMPANY LAW: *Winding-up – Assessment of damages – Compensation for purchase price of machineries – Appeal against decision of High Court – High Court relied wholly on auditor's report adduced by only one party in assessing damages – Whether auditor's report took into account depreciation of machineries – Whether auditor's report took into account brand, model and life span of machineries in considering depreciation of value – Whether no depreciation as machineries were never utilised – Whether value of machineries same as original purchase price – Percentage of fair value of depreciation of machineries – Whether High Court correct in relying wholly on auditor's report – Whether damages assessed fair – Companies Act 1965, s. 305(1)*

The appellants were the directors of Spandeck Engineering Sdn Bhd ('Spandeck Engineering'). Spandeck Engineering (Johor) Sdn Bhd ('Spandeck Johor'), a company formed as the result of a joint venture agreement between Spandeck Engineering and the respondent, entered into a tenancy agreement with Panoramic Industrial Sdn Bhd. Pursuant to the tenancy, purchased machineries were commissioned and affixed on Spandeck Johor's pre-site yard. In a management meeting, it was recorded that, *inter alia*, all moveable items shall be taken out and properly stored. Following this, the first appellant authorised the removal of four items for storage although this was objected by the respondent. A tenancy dispute later arose between Spandeck Johor and Panoramic Industrial Sdn Bhd and the latter sued the former. While the tenancy suit was still on-going, on the application of the respondent, Spandeck Johor was wound up. The respondent then claimed against Spandeck Johor and the appellants at the High Court, pursuant to s. 305(1) of the Companies Act 1965 ('the Act'), for compensation in the sum

of RM1,795,531.45, being the purchase price of the machineries. The High Court ordered that the appellants be personally liable for all the machineries and for the appellants to compensate Spandeck Johor RM1,795,531.45 ('the first decision'). However, the Court of Appeal allowed the appellants' appeal against the first decision and the same was set aside and the matter was remitted to the High Court for the High Court to take into account the depreciation of the machineries based on 'accepted accounting principles' ('the order dated 9 December 2013'). At the High Court, the respondent filed 'notis janji temu pentaksiran' for assessment of the machineries from the date the machineries were purchased until the date of the winding-up of Spandeck Johor. On the notice of the assessment, the Judicial Commissioner ('JC') found that (i) the order dated 9 December 2013 confirmed the liability of the appellants for all the machineries claimed by the respondent under s. 305(1) of the Act; and (ii) the only issue to be determined was the depreciation of the machineries based on 'accepted standard accounting principles' to assess the amount of compensation. The appellants did not tender any expert report while the respondent tendered an auditor's report, prepared by PW1, which stated that there was no depreciation of the machineries as they were never used in the production of goods. Relying wholly on PW1's report, the JC awarded the exact sum ordered in the first decision, which was RM1,795,531.45, against the appellants. Hence, the present appeal. In support of their appeal, the appellants submitted that (i) the order date 9 December 2013 did not expressly provide that the appellants were liable for all the machineries; and (ii) the JC erred in relying on PW1's report.

Held (allowing appeal in part)

Per Tengku Maimun Tuan Mat JCA delivering the judgment of the court:

(1) The first ground of appeal was bereft of any merit. There was no error of law or fact in the findings of the JC. Although the order dated 9 December 2013 made no mention of the liability of the appellants to compensate for all the machineries, it was clear that the appeal of the appellants against the first decision was only allowed in part *ie,* only in relation to the quantum. This meant that the first decision of the High Court in respect of the appellants' liability to pay, pursuant to s. 305(1) of the Act, was upheld by this court and this was borne out of the words 'seksyen 305 Akta Syarikat 1965 diguna pakai'. Furthermore, from the words '… kes dihantar balik ke Mahkamah Tinggi untuk ditaksirkan …', it was clear as to its intent *ie*, that the matter be remitted to the High Court only for the purposes of determining the quantum based on the 'accepted standard accounting principles'. Obviously, there could not have been an order for quantum to be assessed if liability has yet to be determined or established. (paras 28-30)

(2) The JC erred in wholly relying on PW1's report. In his report, PW1 merely restated the background facts and the earlier decision of the court in relation to the dispute between the parties, as per the information given to him by the respondent. PW1 relied on Malaysian Accounting Standards Board ('MASB') 14 and 15 in concluding that based on accepted standard accounting principles, there was no depreciation of the machineries as the machineries were never utilised for production at all by the company. However, PW1 only considered a small part of MASB 14. There was no reference in his report as to which method he adopted in arriving at the conclusion that he did. (paras 31, 33, 34, 36 & 39)

(3) PW1 admitted that he did not take into account the brand, model and life span of the machineries and neither did he consider whether the machineries were obsolete. Clearly, based on MASB 14 and 15, there would have been depreciation of the machineries by reason of wear and tear. Therefore, PW1's conclusion, that the value of the machineries were the same as the original purchase price due to the fact that there was no depreciation, was arrived at without justification. The report was flawed and was lacking in proper basis due to PW1's omission or failure to consider the material relevant aspects of MASB 14 and 15. (paras 39 & 42)

(4) The JC was plainly wrong in accepting PW1's report in total and in failing to consider PW1's admission that the machineries were depreciated and were in a spoilt condition and that based on the relevant guidelines, the standard book value of depreciation for machineries of this nature would be 10-15%. The fact that there was no other expert report before the JC did not negate the fact that His Lordship was under a duty to form his own independent judgment on the issue of depreciation of the machineries according to accepted accounting principles, by reference to MASB 14 and 15. Since there was no other material and taking into account PW1's admission on the standard book value of depreciation, a fair value for depreciation would be 10% of the purchase value of the machineries. The order of the High Court was set aside and substituted with an order that the amount awarded against the appellants, which was RM1,795,531.45, be reduced by 10%. (paras 43-46)

Bahasa Malaysia *Headnotes*

Perayu-perayu adalah pengarah Spandeck Engineering Sdn Bhd ('Spandeck Engineering'). Spandeck Engineering (Johor) Sdn Bhd ('Spandeck Johor'), sebuah syarikat yang ditubuhkan hasil perjanjian usaha sama antara Spandeck Engineering dan responden, memeterai satu perjanjian sewaan dengan Panoramic Industrial Sdn Bhd. Susulan sewaan ini, mesin-mesin yang dibeli

dikomisen dan dipasang melekat di ruang pra-tapak. Dalam satu mesyuarat pengurusan, dicatatkan bahawa, antara lain, semua barang-barang boleh alih hendaklah dikeluarkan dan disimpan dengan teratur. Berikutan itu, perayu pertama membenarkan penyingkiran empat barang untuk simpanan walaupun ini dibantah oleh responden. Satu pertikaian berkenaan sewaan timbul antara Spandeck Johor dan Panoramic Industrial Sdn Bhd dan Panoramic Industrial Sdn Bhd menyaman Spandeck Johor. Sementara guaman sewaan masih berjalan, atas permohonan responden, Spandeck Johor digulung. Responden seterusnya menuntut terhadap Spandeck Johor dan perayu-perayu di Mahkamah Tinggi, bawah s. 305(1) Akta Syarikat 1965 ('Akta'), untuk pampasan berjumlah RM1,795,531.45, iaitu harga belian mesin-mesin. Mahkamah Tinggi memerintahkan perayu-perayu bertanggungan secara peribadi untuk mesin-mesin dan agar perayu-perayu memampas Spandeck Johor sejumlah RM1,795,531.45 ('keputusan pertama'). Walau bagaimanapun, Mahkamah Rayuan membenarkan rayuan perayu-perayu terhadap keputusan pertama dan mengetepikannya dan hal perkara tersebut dikembalikan ke Mahkamah Tinggi agar Mahkamah Tinggi mengambil kira susut nilai mesin-mesin berdasarkan 'prinsip-prinsip akaun yang diterima' ('perintah bertarikh 9 Disember 2013'). Di Mahkamah Tinggi, responden memfailkan notis janji temu pentaksiran untuk taksiran mesin-mesin dari tarikh mesin-mesin tersebut dibeli hingga tarikh penggulungan Spandeck Johor. Berkenaan notis taksiran tersebut, Pesuruhjaya Kehakiman ('PK') memutuskan (i) perintah bertarikh 9 Disember 2013 mengesahkan liabiliti perayu-perayu untuk mesin-mesin yang dituntut oleh responden bawah s. 305(1) Akta; dan (ii) satu-satunya isu yang perlu diputuskan ialah susut nilai mesin-mesin berdasarkan 'prinsip-prinsip piawaian perakaunan yang diterima' untuk mentaksir jumlah pampasan. Perayu-perayu tidak mengemukakan apa-apa laporan pakar manakala responden mengemukakan laporan juruaudit, disediakan oleh PW1, yang menyatakan mesin-mesin tidak mengalami susut nilai kerana kesemuanya tidak pernah digunakan untuk penghasilan barang-barang. Bergantung sepenuhnya pada laporan PW1, PK mengawardkan jumlah sama yang diperintahkan dalam keputusan pertama, iaitu RM1,795,531.45, terhadap perayu-perayu. Maka timbul rayuan ini. Menyokong rayuan mereka, perayu-perayu menghujahkan (i) perintah bertarikh 9 Disember 2013 tidak memperuntukkan dengan jelas bahawa perayu-perayu bertanggungan untuk semua mesin-mesin; dan (ii) PK terkhilaf dalam bergantung pada laporan PW1.

Diputuskan (membenarkan sebahagian rayuan)
Oleh Tengku Maimun Tuan Mat HMR menyampaikan penghakiman mahkamah:

(1) Alasan pertama rayuan tidak bermerit. Tiada kekhilafan undang-undang mahupun fakta dalam dapatan PK. Walaupun perintah bertarikh 9 Disember 2013 tidak menyebut tentang liabiliti perayu-perayu untuk

memampas kesemua mesin, jelas bahawa rayuan perayu-perayu terhadap keputusan pertama hanya dibenarkan sebahagiannya iaitu berkenaan kuantum sahaja. Ini bermakna keputusan pertama Mahkamah Tinggi, berkenaan liabiliti perayu-perayu untuk membayar, bawah s. 305(1) Akta, disahkan oleh mahkamah ini dan ini dinyatakan dalam perkataan-perkataan 'seksyen 305 Akta Syarikat 1965 diguna pakai'. Tambahan lagi, berdasarkan perkataan-perkataan '… kes dihantar balik ke Mahkamah Tinggi untuk ditaksirkan …', niatnya jelas iaitu agar hal perkara tersebut dikembalikan ke Mahkamah Tinggi hanya untuk tujuan menentukan kuantum berdasarkan 'prinsip-prinsip piawaian perakaunan yang diterima'. Jelas tiada perintah tentang kuantum untuk ditaksir jika liabiliti belum diputuskan atau dibuktikan.

(2) Pesuruhjaya Kehakiman terkhilaf apabila bergantung sepenuhnya pada laporan PW1. Dalam laporannya, PW1 sekadar menyatakan semula latar belakang fakta-fakta dan keputusan terdahulu mahkamah berkenaan pertikaian antara pihak-pihak, berdasarkan maklumat yang diberi kepadanya oleh responden. PW1 bergantung pada Lembaga Piawaian Perakaunan Malaysia ('LPPM') 14 dan 15 dalam menyimpulkan bahawa, berdasarkan prinsip-prinsip piawaian perakaunan yang diterima, mesin-mesin tidak mengalami susut nilai kerana kesemuanya tidak pernah digunakan untuk pengeluaran sama sekali oleh syarikat. Walau bagaimanapun, PW1 hanya mempertimbangkan sebahagian kecil LPPM 14. Dalam laporannya, tiada rujukan tentang kaedah yang diguna pakai dalam mencapai kesimpulan tersebut.

(3) PW1 mengaku dia tidak mengambil kira jenama, model dan jangka hayat mesin-mesin tersebut mahupun mempertimbangkan sama ada mesin-mesin tersebut sudah usang. Jelas, berdasarkan LPPM 14 dan 15, mesin-mesin tersebut pasti mengalami susut nilai akibat haus dan lusuh. Walau bagaimanapun, kesimpulan PW1, bahawa nilai mesin-mesin sama dengan harga belian asal berikutan fakta bahawa tiada susut nilai, dicapai tanpa apa-apa penjelasan. Laporan tersebut cacat dan kekurangan asas yang betul akibat ketinggalan atau kegagalan PW1 mempertimbangkan aspek-aspek relevan LPPM 14 dan 15.

(4) Pesuruhjaya Kehakiman jelas terkhilaf apabila menerima sepenuhnya laporan PW1 dan dalam kegagalan mempertimbangkan pengakuan PW1 bahawa mesin-mesin tersebut mengalami susut nilai dan dalam keadaan rosak dan berdasarkan garis panduan relevan, susut nilai piawaian buku untuk mesin-mesin jenis ini ialah 10-15%. Fakta bahawa tiada laporan pakar lain yang dikemukakan pada PK tidak menidakkan fakta beliau bertanggungjawab membentuk penghakiman bebas sendiri atas isu susut nilai mesin-mesin berdasarkan prinsip-prinsip piawaian perakaunan yang diterima, merujuk LPPM 14 dan 15. Oleh kerana tiada material

lain dan mengambil kira pengakuan PW1 tentang susut nilai piawaian buku, satu penilaian adil terhadap susut nilai tersebut ialah 10% nilai belian mesin-mesin. Perintah Mahkamah Tinggi diketepikan dan diganti dengan satu perintah agar jumlah yang diawardkan terhadap perayu-perayu, iaitu RM1,795,531.45, dikurangkan sebanyak 10%.

Case(s) referred to:
Dr Shanmuganathan v. Periasamy Sithambaram Pillai [1997] 2 CLJ 153 FC ***(refd)***
National Justice Compania Naviera SA v. Prudential Assurance Co Ltd (The Ikarian Reefer) [1993] FSR 563 ***(refd)***

Legislation referred to:
Companies Act 1965 (since repealed), s. 305(1)
Evidence Act 1950, s. 114(g)

For the appellants - Dhyana Shila & Lee Lin Lin; M/s Dhyan & Co
For the respondent - Wong Kim Fatt, Yeo Chun Ming & Wong Boon Chong; M/s CM Yeo & Assocs

[Editor's note: For the High Court judgment, please see Repute Ventures Sdn Bhd lwn. Chi Chao-Ton Tony & Yang Lain [2018] 1 LNS 601 (overruled in part).]

Reported by Najib Tamby

JUDGMENT

Tengku Maimun Tuan Mat JCA:

Introduction

[1] This appeal was filed by the directors of Spandeck Engineering (Johor) Sdn Bhd (in liquidation) ("Spandeck Johor") against the order of the learned Judicial Commissioner ("JC") on assessment of damages pursuant to s. 305(1) of the Companies Act 1965 ("the Companies Act") which provides for the power of the court to assess damages against officers of a company who, in the course of winding up, had misapplied or retained or become liable or accountable for any money or property of the company.

Background Facts

[2] Spandeck Johor was incorporated as a result of a joint venture agreement between Spandeck Engineering Sdn Bhd ("Spandeck Engineering") and Repute Ventures Sdn Bhd ("the respondent"). Among the salient terms of the joint venture agreement were:

(i) Spandeck Engineering and the respondent to own 51% and 49% of the shares, respectively in Spandeck Johor;

(ii) Spandeck Johor was to carry on the business of designing, manufacturing, marketing and installation of prefabricated construction products in Malaysia;

(iii) Spandeck Engineering undertook to impart technical knowledge while the respondent undertook to procure a tenancy agreement from Panoramic Industrial Development Sdn Bhd ("Panoramic Industrial") and to assist in obtaining all permits and licence necessary to carry on the pre-cast business.

[3] The appellants were the directors appointed to represent Spandeck Engineering while the directors representing the respondent were Gooi Seong Chneh ("Gooi"), Lim Thai San with their alternates being Soh Chong Boon and Puen Tak Hong.

[4] As per the terms of the joint venture agreement, Spandeck Johor entered into a tenancy agreement with Panoramic Industrial wherein the demised premises having the postal address of No. 35, Jalan Johar 1, Taman Perindustrian, Desa Cemerlang, Ulu Tiram, Johor was used as Spandeck Johor's pre-site yard ("the said land").

[5] Panoramic Industrial at all material times was a related company of the respondent with Gooi's family members being the shareholder and director of these companies and the company which owns the said land.

[6] On 10 August 1998, Spandeck Johor resolved to purchase the following machineries:

	Description	**Purchase Price**
1.	Saw Cutting Machine	RM301,170.15
2.	Gantry Crane (2 units)	RM226,666.00
3.	Casting Bed (2 units)	RM226,666.00
4.	Nozzle Module	RM349,195.05
5.	Top Machine	RM322,639.20
6.	Stressing Jack Power Pac	RM 20,000.00
7.	Additional Nozzle Module	RM349,195.00
	Total	**RM1,795,531.45**

[7] Except for item 7, all the machineries described above were delivered to Spandeck Johor's site. The machineries were commissioned and affixed on the said land.

[8] At the 8th Management Meeting held on 28 January 1999 which was attended by the directors and the representatives of Spandeck Engineering and the respondent, it was recorded as follows:

(i) All moveable items shall be taken out and properly stored;

(ii) Additional nozzle module (item 7) purchased to be kept in Singapore;

(iii) Tenancy agreement for the pre-site yard to be finalised;

(iv) The hoist of the cranes has yet to be installed which had caused delay in obtaining authority from the Department of Machinery.

[9] In 2001, a dispute arose between Spandeck Johor and Panoramic Industrial in respect of the tenancy of the land.

[10] In accordance with the 8th Management Meeting and for safekeeping, the first appellant on behalf of Spandeck Johor authorised removal of four items for storage. The removed items were saw cut machine, nozzle module, top machine and stressing jack. The respondent objected to the removal of these machineries.

[11] In 2002, *vide* a Civil Suit No. 22-534-2002, Panoramic Industrial sued Spandeck Johor on the tenancy dispute ("the tenancy suit").

[12] On 25 October 2002, Spandeck Johor passed a board of directors resolution to sell the machineries but the sale was opposed by the respondents. Thus, other than the four machineries that had been removed, the balance remained on the land.

[13] Whilst the tenancy suit was still on-going, on the application of the respondent, Spandeck Johor was wound up on 8 January 2008 on just and equitable grounds as it had not obtained a licence to carry on the business as envisaged under the joint venture agreement.

[14] In 2010, the respondent sued the appellants and Spandeck Johor. The claim against the appellants as directors of Spandeck Johor was for compensation in the sum of RM1,795,531.45. As alluded to earlier, the claim was made pursuant to s. 305(1) of the Companies Act. The basis for the claim was that the appellants did not return the machineries to the liquidator after Spandeck Johor was wound up.

[15] On 17 June 2011, the High Court ordered that the appellants be personally liable for all the machineries and for the appellants to compensate Spandeck Johor the sum of RM1,795,531.45 being the purchase price of the machineries in 1998 ("the first decision"). Against the first decision of the High Court, the appellants appealed to this court.

[16] Pending the decision of this court on the appeal, on 1 February 2012, the first appellant filed a proof of debt with the liquidator stating that he could not provide the value of the machineries as at the winding-up order, as the machineries had depreciated.

[17] On 9 December 2013, this court allowed the appellants' appeal against the first decision. The first decision of the High Court was set aside and while this court found that s. 305(1) of the Companies Act was applicable, the matter was remitted to the High Court for the High Court to take into account the depreciation of the machineries based on "accepted accounting principles".

The Assessment of Damages

[18] On 5 December 2016, pursuant to the order of this court dated 9 December 2013, the respondent filed the Notis Janji Temu Pentaksiran for assessment of the machineries from 10 August 1998 (the date the machineries were purchased) until 8 January 2008 (the date of the winding up of Spandeck Johor).

[19] On the notice of assessment dated 5 December 2016, the learned JC found:

(i) that the order of this court dated 9 December 2013 had confirmed the liability of the appellants for all the machineries claimed by the respondent under s. 305(1) of the Companies Act; and

(ii) that the only issue to be determined was on the depreciation value of the machineries based on "accepted standard accounting principles", to assess the amount of compensation payable by the appellants.

[20] For purposes of assessment of damages, the appellants did not tender any expert report. For the respondent, an auditor's report prepared by Tan Kow Tee (PW1) was tendered wherein it was stated that there was no depreciation of the machineries as the machineries were never used in the production of goods as intended.

[21] Relying wholly on the said report, the learned JC awarded the sum of RM1,795,531.45 (the exact sum ordered in the first decision) against the appellants. It was against this order of the learned JC that the appellants lodged the appeal before us.

The Appeal

[22] The appellants raised the following grounds of appeal:

(i) that the order of this court dated 9 December 2013 did not expressly provide that the appellants were liable for all the machineries ("the liability issue); and

(ii) that the learned JC erred in relying on the respondent's auditor's report ("the quantum issue").

[23] On the issue of liability, learned counsel for the appellants argued that the order of this court dated 9 December 2013 merely states that s. 305(1) of the Companies Act applies; that the order does not expressly provide that all the appellants are liable for all the machineries claimed by the respondent and that this court did not make an order that the appellants had unlawfully retained or removed the machines.

[24] On the quantum issue, learned counsel for the appellants submitted that the learned judge erred in wholly relying on the auditor's report. Learned counsel contended that the auditor's report should not have been relied upon by the learned JC as PW1 had failed to exhibit Malaysian Accounting Standard Board (MASB) 14 and MASB 15, or the whole MASB which formed the basis of the auditor's report/opinion. Learned counsel thus submitted that an adverse inference under s. 114(g) of the Evidence Act 1950 ought to be invoked against the respondent.

[25] In opposing the appeal, the respondent argued that this court, by the order dated 9 December 2013 had decided on the issue of liability of the appellants under s. 305(1) of the Companies Act. There being no application for leave to appeal to the Federal Court against the said order, the decision of this court on liability is final.

[26] On quantum, learned counsel for the respondent submitted that PW1, an accountant and auditor with an experience of 30 years had testified that there was no depreciation in the value of the machineries. The learned JC was therefore correct to order compensation for the value of the machineries at the date of the winding-up order in the sum equal to the purchase price in 1998.

Our Decision

[27] On the issue of liability, for clarity we reproduce below the order of this court dated 9 December 2013:

> ... MAKA ADALAH DENGAN INI DIPERINTAHKAN bahawa Rayuan ini dibenarkan sebahagian dimana:
>
> a) S 305(1) Akta Syarikat 1965 adalah digunapakai dan kes dihantar balik ke Mahkamah Tinggi untuk ditaksirkan di mana kuantum nilai ("depreciation") barang-barang diambil kira berdasarkan "accepted standard accounting principles" dan AKHIRNYA DIPERINTAHKAN bahawa tiada perintah untuk kos di Mahkamah Rayuan.

[28] Although the order made no mention of the liability of the appellants to compensate for all the machineries, it is clear to us that the appeal of the appellants against the first decision was only allowed in part, ie, only in relation to the quantum. This effectively means that the first decision of the High Court in respect of the appellants' liability to pay pursuant to s. 305(1) of the Companies Act was upheld by this court and this was borne out by

the words "Seksyen 305(1) Akta Syarikat 1965 adalah digunapakai". We further found that the order, from the words "… kes dihantar balik ke Mahkamah Tinggi untuk ditaksirkan …" is clear as to its intent ie, that the matter be remitted to the High Court only for purposes of determining the quantum based on the "accepted standard accounting principles". Obviously, there could not have been an order for quantum to be assessed if liability has yet to be determined or established.

[29] Premised on the above, we were not able to agree with the appellants on the issue of liability and we found no error of law or fact in the findings of the learned JC when he stated that:

> [41] … pada pandangan saya, Mahkamah Rayuan telah menghantar kes ini semula ke Mahkamah Tinggi, bagi tujuan terhad untuk mentaksirkan jumlah pampasan yang perlu dibayar oleh Defendan Pertama, Kedua dan Ketiga kepada syarikat Defendan Keempat dengan mengambilkira persoalan sama ada terdapat "susut nilai" (depreciation) atas peralatan-peralatan dan mesin-mesin syarikat Defendan Keempat dan sekiranya ada berapakah peratusan "susut nilai" tersebut yang perlu diambilkira, berdasarkan prinsip perakaunan yang diterimapakai.
>
> [42] Oleh yang demikian, ... saya berpendapat Hakim Mahkamah Tinggi telahpun membuat dapatan dan keputusan mengenai isu liabiliti dan dapatan ini telah disahkan oleh Mahkamah Rayuan. Oleh itu, bukanlah tugas saya dalam perbicaraan di dalam Notis Janji Temu Pentaksiran ini untuk mengganggu atau mengkaji semula dapatan fakta mengenai liabiliti yang telah dibuat oleh Mahkamah Tinggi dan yang telah disahkan oleh Mahkamah Rayuan.

[30] We therefore found the first ground of appeal bereft of any merit.

[31] On quantum, having considered the report tendered by PW1 and the submissions advanced by both parties, we agreed with the appellants that the learned JC erred in wholly relying on the said report.

[32] In the proceedings for assessment of damages, PW1, whose duty was to establish whether there was any depreciation of the machineries and the value of the depreciation, had affirmed an affidavit on his conclusions. PW1 had also testified orally and he was cross-examined by learned counsel for the appellants.

[33] In his report, affidavit and witness statement, PW1 unequivocally stated that based on accepted standard accounting principles, there was no depreciation of the machineries as the machineries were never utilised for production at all by the company.

[34] In so concluding, PW1 had relied on MASB 14 and MASB 15. We noted that in paras. 1-21 of his report, PW1 was merely restating the background facts and the earlier decision of the court in relation to the dispute between the parties, as per the information given to him by the respondent. The pertinent findings of PW1 are found in paras. 22 and 23 wherein he stated the following:

> 22. **Accounting Standard By Malaysian Accounting Standard Board (MASB)**
>
> In Malaysia, the Malaysian Accounting Standard Board (MASB) is the authority that issues all accounting standards pertaining to the operation of accounts.
>
> Depreciation accounting is covered by MASB 14 and MASB 15, issued by MASB.
>
> The relevant portion of MASB 14 that is applicable to the case is reproduced herewith as follows:
>
> Depreciable assets are defined as assets which:
>
> (a) are expected to be used during more than one accounting period;
>
> (b) have a limited useful life;
>
> (c) are held by an enterprise for use in the production or supply for goods and services, for rental to others or for administration purposes.

[35] PW1 then concluded as follows as para. 23 of his report:

> 23. In accordance with MASB 14 and MASB 15:
>
> (1) The One Additional Nozzle Module costing RM349,195-05 (item 7) has never been delivered to the Company and it is our opinion that the question of depreciation does not arise.
>
> (2) The other machineries (items (1) to (6) totaling RM1,446,336-40 have not been utilised in the production of goods as intended and would not be considered as depreciable assets under the definition of MASB 14. It is our opinion that they should not be depreciated.

[36] As submitted by the appellants, PW1 did not exhibit MASB 14 or MASB 15 which he relied on in his report. The full text of MASB 14 and MASB 15 were however produced by the appellants and we found that PW1 had only considered a small part of MASB 14. In particular, PW1 had only considered para. 4(a), (b) and (c) on the definition of depreciable assets.

[37] Paragraph 4 of MASB 14 which provides for definitions reads: A

4. The following terms are used in this Standard with the meanings specified:

…

Depreciation is the allocation of the depreciable amount of an asset over its estimated useful life. Depreciation for the accounting period is charged to net profit or loss for the period either directly or indirectly. B

Depreciable assets are assets which:

(a) are expected to be used during more than one accounting period; C

(b) have a limited useful life; and

(c) are held by an enterprise for use in the production or supply of goods and services, for rental to others, or for administrative purposes. D

Useful life is either:

(a) the period over which a depreciable asset is expected to be used by the enterprise; or

(b) the number of production or similar units expected to be obtained from the asset by the enterprise. E

Depreciable amount of a depreciable asset is the historical cost or other amount substituted for historical cost in the financial statements, less the estimated residual value.

… F

Depreciation

5. The depreciable amount of a depreciable asset should be allocated on a systematic basis to each accounting period during the useful life of the asset. G

6. …

Useful Life

7. The useful life of a depreciable asset should be estimated after considering the following factors: H

(a) expected physical wear and tear;

(b) obsolescence; and

(c) legal or other limits on the use of the assets.

I

A

8. The useful lives of major depreciable assets or classes of depreciable assets should be reviewed periodically and depreciation rates adjusted for the current and future periods if expectations are significantly different from the previous estimates. The effect of the change should be disclosed in the accounting period in which the change takes place.

B

9. …

10. …

11. …

C

12. The depreciation method selected should be applied consistently from period to period unless altered circumstances justify a change. In an accounting period in which the method is changed, the effect should be quantified and disclosed and the reason for the change should be stated.

D

[38] MASB 15 is the standard on property, plant and equipment. The relevant paragraphs are:

41. A class of property, plant and equipment is a grouping of assets of a similar nature and use in an enterprise's operations. The following are examples of separate classes:

E

(a) land;

(b) land and buildings;

(c) machinery;

…

F

49. The economic benefits embodied in an item of property, plant and equipment are consumed by the enterprise principally through the use of the asset. However, other factors such as technical obsolescence and wear and tear while an asset remains idle often result in the diminution of the economic benefits that might have been expected to be available from the asset. ...

G

…

…

57. A variety of depreciation methods can be used to allocate the depreciable amount of an asset on a systematic basis over its useful life. These methods include the straight-line method, the diminishing balance method and the sum-of-the-units method. Straight-line depreciation results in a constant charge over the useful life of the asset. The diminishing balance method results in a decreasing charge over the useful life of the asset. The sum-of-the-units method results in a charge based on the expected use or output of the asset. …

H

I

[39] PW1 clearly did not deal with the definition or element of 'useful life' of the machineries as stipulated in para. 7 of MASB 14, and therefore had failed to consider the definition of the depreciable assets in para. 4 of MASB 14 as a whole. PW1 also did not deal with the various depreciation method stipulated in para. 57 of MASB 15. There was no reference in his report as to which method he adopted in arriving at the conclusion that he did. Further, PW1 admitted that he did not take into account the brand, model and life span of the machineries and neither did he consider whether the machineries were obsolete. Clearly, based on MASB 14 and MASB 15, there would have been depreciation of the machineries by reason of wear and tear.

[40] In *Dr Shanmuganathan v. Periasamy Sithambaram Pillai* [1997] 2 CLJ 153; [1997] 3 MLJ 61, Anuar CJ (Malaya) said at p. 182 (CLJ); p. 85 (MLJ):

> It is trite that the principal object of expert evidence is to assist the court to form its own opinion. An expert should give his reasons. The court is the final arbiter, not the experts or eyewitnesses. Despite the wealth of authorities available on the subject, the errors that appear in judgments invited us to elaborate on this matter.
>
> The Supreme Court of India's decision in *Murarilal v. State of MP* AIR 1980 SC 531 at p 534 is illustrative and some paragraphs of the judgment are worth reproducing:
>
> > … But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses – the equality of credibility or incredibility being one which an expert shares with all other witnesses – but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. … His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence.

[41] As set out in *National Justice Compania Naviera SA v. Prudential Assurance Co Ltd, (The Ikarian Reefer)* [1993] FSR 563; [1993] 2 Lloyd's Rep 68, the duties and responsibilities of expert witnesses include the following:

> Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation …
>
> An expert witness should provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within his expertise …
>
> An expert witness should state the facts or assumptions upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion …

[42] Based on the aforesaid, we found that the conclusion of PW1 that the value of the machinery is the same as the original purchase price due to the fact there was no depreciation, was arrived at without justification. The report was flawed and was lacking in proper basis due to PW1's omission or failure to consider the material or relevant aspects of MASB 14 and MASB 15. PW1 failed to consider that by definition in para. 4 of MASB 14, depreciable assets are not only assets which are not used for production but assets which have a limited useful life. PW1 made no mention at all in his report on "useful life" where as stipulated in para. 7 of MASB 14, the useful life of a depreciable asset should be estimated after considering several factors, including the expected physical wear and tear of the machineries.

[43] The learned JC was plainly wrong in accepting the auditor's report in total and in failing to consider PW1's admission (after being shown the photographs of the machineries in the affidavits; PW1 not having visited the land), that the machineries were depreciated and were in a spoilt condition and that based on the relevant guidelines, the standard book value of depreciation for machineries of this nature would be 10%-15%.

[44] The fact that there was no other expert report before the learned JC did not negate the fact that His Lordship was under a duty to form his own independent judgment on the issue of depreciation of the machineries according to accepted accounting principles, by reference to MASB 14 and MASB 15.

[45] The appellants contended that based on the minimum of 10% yearly depreciation, the machineries would have zero value after ten years. We were not able to accept the appellants' contention. There being no other material before the court, and taking the admission of PW1 on the standard book value of depreciation, we were of the view that a fair value for depreciation would be 10% of the purchase value of the machineries.

[46] Having regard to all the above, we unanimously allowed the appeal in part. The order of the High Court was set aside and substituted with an order that the amount awarded against the appellants ie, RM1,795,531.45 be reduced by 10%, and that each party is to bear its own costs.